



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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Doug Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO B&H SALES CORPORATION FOR Unpermitted Facility**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and B&H Sales Corporation for the purpose of resolving certain violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "B&H Sales" means B&H Sales Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. B&H Sales is a 'person' within the meaning of Va. Code § 10.1-1400.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1401.
3. "Construction and Demolition Debris" or "CDD" means solid waste generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures; by the destruction of structures and their foundations and/or from land clearing operations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility", means the solid waste management facility, located at 1221 West 25<sup>th</sup> Street, Norfolk, Virginia, which is owned and operated by B&H Sales Corporation.
7. "Materials Recovery Facility" or "MRF" means a solid waste management facility for the collection, processing and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
10. "Permit" means the written permission of the Director to own, operate or construct a solid waste management facility.
11. "Permit-by-Rule" or "PBR" is a provision of the Regulations stating a facility or activity is deemed to have a permit if it meets the requirements of the Regulations. Unless the owner or operator of a transfer station, materials recovery, energy recovery, thermal incineration, incineration, compost facility or waste pile chooses to apply for and receive a full permit pursuant to the Regulations, the owner or operator shall be deemed to have a solid waste permit if the conditions of the Regulations are met.
12. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC20-80-10 *et seq.*
13. "Solid Waste" means any of those materials defined as 'solid waste' in 9 VAC 20-80-140 *et seq.*
14. "Solid Waste Management Facility" means a site used for planned treating, storing, or disposing of solid waste
15. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

**SECTION C: Findings of Fact and Conclusions of Law**

1. B&H is a demolition contractor who owns the Facility located at 2309 Hampton Boulevard in Norfolk, Virginia.
2. On April 2, 2010, in response to a Pollution Response Program ("PREP") complaint, DEQ compliance staff conducted a site inspection of the Facility and observed the unloading, processing and transfer of solid waste consisting of CDD. According to B&H Sales, the Facility operation includes the recovery of metal, concrete and wood from CDD brought onsite from various demolition jobs and CDD dumpster rentals.
3. A review of DEQ records did not find that B&H Sales was acknowledged by DEQ as operating a MRF under a ("PBR") or Permit.
4. Va. Code. 1408.1(A) and 9 VAC 20-80-90 require a Permit for the operation of a solid waste management facility.
5. On April 27, 2010, based on the inspection and follow-up information, the Department issued a Notice of Violation to B&H Sales for the violations described in paragraphs C(2) through C(4), above.
6. On May 6, 2010, DEQ met with representatives of B&H Sales to discuss the violations.
7. On May 25, 2010, B&H Sales submitted a Notice of Intent to operate a MRF under a PBR and a permit application. To date, B&H Sales has not submitted a complete permit application and has not been acknowledged by DEQ as operating a MRF under a PBR.
8. Based on the results of April 2, 2010 inspection, and the documentation submitted by B&H Sales, the Board concludes that B&H Sales has violated the Regulations as described in paragraph C(2) through C(4) above.
9. In order for B&H Sales to return to compliance, DEQ staff and representatives of B&H Sales have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.
10. B&H Sales submitted inability-to-pay documentation and was deemed unable to pay a civil charge regarding the violations of the Regulations as described in paragraph C(2) through (4) above.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1455, the Board orders B&H Sales and B&H Sales agrees to perform the actions described in Appendix A of this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of B&H Sales good cause shown by B&H Sales, or on its own motion pursuant to the Administrative Process Act after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order, B&H Sales admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. B&H Sales consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. B&H Sales declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by B&H Sales to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. B&H Sales shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. B&H Sales shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. B&H Sales shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the TRO Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which B&H Sales intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and B&H Sales. Nevertheless, B&H Sales agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - (a) B&H Sales petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to B&H Sales.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve B&H Sales from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by B&H Sales and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of B&H Sales certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind B&H Sales to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of B&H Sales.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, B&H Sales voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25 day of April, 2011.

Maria L. Sold  
acting Regional Director  
Department of Environmental Quality

B&H Sales Corporation voluntarily agrees to the issuance of this Order.

Date: March 11, 2011 By: Earl L. Coleman Secretary/Treasurer  
(Person) (Title)

of B&H Sales Corporation.

**Commonwealth of Virginia**

City/County of Norfolk

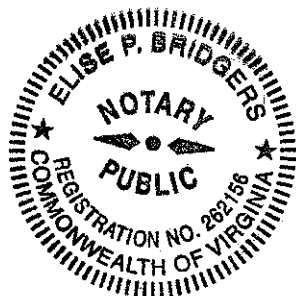
The foregoing document was signed and acknowledged before me this 11 day of  
March, 2011, by Earl L. Coleman, who is

Secretary/Treasurer of B&H Sales Corporation on behalf of B&H Sales Corporation.

Elise P. Bridgers  
Notary Public

262156

Registration No.



My commission expires: August 31, 2014

Notary Seal:

## **APPENDIX A**

### **SCHEDULE OF COMPLIANCE**

B&H Sales shall:

1. By June 1, 2011, submit to DEQ all information required for B&H Sales to be acknowledged by DEQ as an operating a MRF under a PBR in accordance with the Regulations.
2. By March 1, 2012, complete removal of solid waste from areas of the Facility not applicable to the MRF.
  - a. By June 1, 2011, provide to DEQ a schedule for removal of solid waste from areas of the Facility not applicable to the MRF.
  - b. Beginning third quarter 2011, provide to DEQ quarterly reports documenting the amount of solid waste removed each quarter. The quarterly reports shall include disposal receipts for the solid waste removed to a qualified disposal location. Each quarterly report shall be due to DEQ by the 10<sup>th</sup> day of the end of the quarter.
  - c. Quarterly reports shall continue until the removal of solid waste from areas of the Facility not applicable to the MRF.
3. Submit all requirements of Appendix A of this Order to:

Regional Director  
Virginia Department of Environmental Quality  
Tidewater Regional Office  
5636 Southern Blvd  
Virginia Beach, VA 23462